United Nations CCPR/C/SR.3098

International Covenant on Civil and Political Rights

Distr.: General
10 October 2014

Original: English

Human Rights Committee
111th session

Summary record of the 3098th meeting
Held at the Palais Wilson, Geneva, on Tuesday, 7 October at 3 p.m.

Chairperson: Sir Nigel Rodley

Contents

Consideration of reports submitted by States parties under article 40 of the Covenant

Fifth periodic report of Sri Lanka

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent *within one week of the date of this document* to the Editing Section, room E.5108, Palais des Nations, Geneva.

Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

GE.14-18241 (E) 091014 101014

1418241

Please recycle

The meeting was called to order at 3 p.m.

Consideration of reports submitted by States parties under article 40 of the Covenant

Fifth periodic report of Sri Lanka (CCPR/C/LKA/5; CCPR/C/LKA/Q/5 and Add.1)

1. *At the invitation of the Chairperson, the delegation of Sri Lanka took places at the Committee table.*

2. **Mr. Aryasinha** (Sri Lanka), introducing his country's fifth periodic report (CCPR/C/LKA/5), said that the previous report had been considered in 2003 during a short-lived cessation of hostilities between the Government and the Liberation Tigers of Tamil Eelam (LTTE). That terrorist group had continued to violate the ceasefire, however, and successive governments had faced the challenge of preserving human rights in the face of violent acts of terrorism. The Government had been compelled to intervene militarily on humanitarian grounds to protect the human rights of its citizens, which had resulted in the liberation of the Eastern and Northern Provinces from LTTE control. Throughout the conflict, the Government had continuously supplied its citizens with food, medicines and other essential supplies.

3. Having restored to the whole population the most important right, namely the right to life, his Government was committed to the realization of all civil and political as well as economic, social and cultural rights, including the right to development. It had re-established the democratic framework, including the civil administration system, and local and provincial elections had been held in both the affected provinces. The Government continued to take action in the areas of demining, resettlement, rehabilitation, reconstruction, socioeconomic development and political empowerment.

4. Sri Lanka had taken several legislative measures in order to better meet its international obligations, such as enacting the International Covenant on Civil and Political Rights (ICCPR) Act No. 56 of 2007, and it continued to proactively engage with various bodies in the United Nations system. The Government had received visits from the United Nations High Commissioner for Human Rights, the Special Rapporteur on the human rights of internally displaced persons and the Special Rapporteur on the human rights of migrants and would consider extending invitations to other special rapporteurs. It also continued to engage with the Working Group on Enforced or Involuntary Disappearance.

5. The Government had accepted the majority of the recommendations made during the universal periodic review and had adopted the National Plan of Action for the Promotion and Protection of Human Rights 2011–2016. It was in the process of implementing the recommendations made by the Lessons Learnt and Reconciliation Commission, and it had established the Special Bureau for Reconciliation and the Presidential Commission of Inquiry on Missing Persons in the Northern and Eastern Provinces. A bill on assistance to and protection of victims of crime and witnesses had been submitted to Parliament in September 2014.

6. The Government had been quick to condemn the sporadic incidents of religious violence targeting places of worship of all four religions practised in the country. The police had taken steps to investigate the incidents that had taken place in Aluthgama and Beruwala and to bring the suspects before the courts. Thus far, 148 persons had been arrested in connection with those events. Although no special laws had been drafted to protect human rights defenders and media personnel, all constitutional guarantees were available to them. No press censorship had been imposed under the current Government, and the law on criminal defamation had been repealed. Media pluralism was well established in the country, and there were no restrictions on what could be reported by the press.

7. Although LTTE had been military defeated in Sri Lanka in May 2009, the threat of terrorism had not abated. Given that the use of terrorism to secure political and ideological objectives remained a possibility, the time was not yet right to repeal the Prevention of Terrorism Act.

8. **Ms. Tillekeratne** (Sri Lanka), summarizing her Government's replies to issues 1, 2, 8, 17 and 25 in the list of issues (CCPR/C/LKA/Q/5), said that the Supreme Court had determined that the Constitution and other laws gave adequate recognition to the Covenant rights and that those rights were justiciable through the legal and constitutional processes in place in the country. Under the eighteenth constitutional amendment, enacted in 2010, the composition and functioning of the Constitutional Council had been changed, and it had become known as the Parliamentary Council. The Supreme Court had declared the amendment to be constitutional. The President needed to consult the Parliamentary Council when making appointments pursuant to the amendment.

9. Provisions had been made to ensure that persons arrested under the Prevention of Terrorism Act were entitled to all safeguards. Since the end of the conflict, the Attorney-General had in many instances opted to rehabilitate suspects as an alternative to prosecution. The courts had also sent convicted persons for rehabilitation as a substitute for jail sentences. The Convention against Torture Act No. 22 of 1994 and the writ of habeas corpus were two examples of the legislative and judicial provisions in place to protect persons from arbitrary arrest and detention.

10. The 2011 Revival of Underperforming Enterprises and Underutilized Assets Act applied to enterprises that had been granted extensive concessions and exemptions with the understanding that they would achieve particular objectives, and it sought to address the failure of those enterprises to achieve those objectives. It had been declared constitutional by the Supreme Court. Mr. Sarath Fonseka had been convicted of various offences by two court martials and by the Colombo High Court. In May 2012, he had been pardoned and released from prison. In view of his pardon, he had not proceeded with his appeals against those convictions. All constitutional safeguards had been followed in the impeachment of former Chief Justice Shirani Bandaranyake, and a bench of five Supreme Court judges had declared the impeachment process constitutional.

11. **Mr. Kotawalagedara** (Sri Lanka), summarizing his Government's replies to issues 3 and 16 in the list of issues, said that, following the end of the armed conflict, the Government had taken on the challenge of rehabilitating more than 12,000 former LTTE combatants, and that the President had extended a general amnesty to all child soldiers on humanitarian grounds. Sri Lanka had subsequently been delisted from Annex II of United Nations Security Council resolution 1612 on children in armed conflict. Former combatants were transformed into peace-loving citizens through a comprehensive process that included rehabilitation, reinsertion, reintegration, reconciliation and reconstruction.

12. The Government recognized that long-term overcrowding in prisons was an important challenge and it had taken a number of measures to address the problem. New prisons were being built, and the capacity of existing prisons was being expanded. In addition, community-based correction measures were being encouraged. Various national and international officials and bodies conducted prison visits, and programmes were being carried out to educate prison officials with regard to the humane treatment of prisoners and the need to address the root causes of crime.

13. **Mr. Illayapparachchi** (Sri Lanka), summarizing his Government's replies to issues 3, 4 and 18 in the list of issues, said that the Government placed special emphasis on matters relating to women and children throughout the country. Women in Sri Lanka benefited from the universal health care system and the universal free education system. Changes in attitudes about women's position in society had been made possible by

women's high levels of educational attainment. The number of women in leadership roles in party politics remained low, however, compared with the percentage of women in the workforce, though the number of women participating in the formulation of government policy, holding public office and performing public functions had increased. The participation of women in professional services was increasing but was based on merit rather than gender quotas. A number of programmes were in place to assist women and girls, particularly those belonging to vulnerable groups. Examples included vocational and informal training programmes and the establishment of women's and children's desks in police stations throughout the country. The Government took stringent action against sexual and gender-based violence and was not aware of any incidents indicating that female ex-combatants faced a higher risk of rape and violence.

14. His Government had been identified by the South Asia Initiative to End Violence Against Children as the most child-friendly Government in the region. A number of mechanisms were in place to implement child rights at all levels of government. Discussions were under way to raise the minimum age of criminal responsibility so as to bring it into line with international standards.

15. **Mr. Divaratne** (Sri Lanka), speaking about his Government's approach to reconciliation, said that a series of measures had been taken to achieve durable solutions for internally displaced persons who had been resettled after the conflict. The appointment of the Presidential Task Force for Resettlement, Development and Security in the Northern Province had been key to that process. The Special Bureau for Reconciliation facilitated and coordinated the implementation of the recommendations made by the Lessons Learnt and Reconciliation Commission. The Government viewed reconciliation as a multifaceted and context-specific process and used a holistic approach to address the issue.

16. **Mr. Iwasawa** noted that the report was five years overdue but welcomed the opportunity to resume dialogue with the State party. While he commended Sri Lanka for becoming a party to many core human rights treaties and for ratifying the Optional Protocol to the Convention, he expressed serious concerns about the Government's lack of cooperation in individual communications procedures. The Committee was concerned about human rights violations that might have been committed by any of the parties in the armed conflict and wished to emphasize that justice, accountability and reconciliation must be secured. The state of the rule of law was also of great concern. The Committee took very seriously the issue of reprisals against members of civil society and expected the State party to share that commitment.

17. It would be helpful to know what progress had been made with the proposed introduction of a constitutional amendment to safeguard the rights to privacy, information and life. It was unclear how the rights recognized in the Covenant were justiciable, since the Covenant had not been incorporated in Sri Lankan law and the International Covenant on Civil and Political Rights Act gave effect to only four of its articles. He would welcome the delegation's comments on reports that, since a Supreme Court decision of 2006 that accession to the Covenant had violated the Constitution, the Covenant had had little effect and the Supreme Court was unlikely to engage in creative interpretation of the Constitution.

18. With reference to the principle of non-discrimination, it was a matter of concern that some of the rights embodied in the Covenant were denied to non-citizens without any justification.

19. It was regrettable that, since the Supreme Court's ruling that the Committee's views and recommendations were not binding, the State party had not cooperated in the individual communications procedures, despite the fact that under the Optional Protocol, which the State party had ratified in 1997, it had a legal obligation to do so. It was hard to understand

why the Supreme Court's decision in the *Singharasa* case prevented the Government from engaging in such cooperation.

20. He requested a response to allegations that the 18th amendment to the Constitution had politicized appointments to key oversight bodies and had tightened the Executive's control over independent bodies by placing the Attorney General's department under the direct control of the Executive, thereby severely undermining the independence of the judiciary.

21. He wished to know whether the High Court had referred any cases to the Human Rights Commission under the International Covenant on Civil and Political Rights Act for an inquiry and a report. According to information received by the Committee, the Human Rights Commission had been downgraded to B status in 2007 owing to its failure to comply with the Paris Principles. In view of worries about the Commission's financial independence, its limited mandate and its lack of timely action on complaints, he enquired as to the existence of plans to make the Commission compatible with the aforementioned Principles in order that it might regain its A status. It would also be interesting to hear what legislative changes would be introduced by a draft amendment to the Human Rights Commission Act, which was designed to strengthen the Commission's powers and mechanisms, and when the amendment was expected to enter into force.

22. He invited the delegation to comment on allegations that some former members of the Liberation Tigers of Tamil Eelam (LTTE) who had surrendered had been detained, interrogated, killed or gone missing. He requested an assessment of the activities of the Bureau of the Commissioner General of Rehabilitation mentioned in paragraph 29 of Sri Lanka's replies to the list of issues and would also appreciate the delegation's comments on information to the effect that former LTTE combatants who had been detained in protective accommodation and rehabilitation centres had not received useful training or counselling and had been subjected to lengthy interrogation. How were those centres supervised? Was it true that the security forces' persistent surveillance, intimidation and monitoring of former combatants' movement still restricted their freedom of movement and freedom of association and inhibited their social and economic reintegration?

23. **Mr. Flinterman** wondered whether Sri Lanka had a comprehensive strategy in place to eliminate practices, stereotypes and attitudes among senior politicians which discriminated against women. What was the legal status of the Women's Charter? Was it still in force and what remedies did it offer? He enquired as to the mandates of the National Committee on Women and the complaints centre. He would be pleased to receive information on the status of the Bill of Women's Rights and would like to know what steps, including temporary special measures, were envisaged to remedy the extremely low level of women's participation in political affairs and to increase the number of women in parliament. Was it true that the Presidential Task Force for Reconstruction and Resettlement did not include any women?

24. He was curious to find out whether the amendments to the Muslim Marriage and Divorce Act would set a minimum age for marriage and prohibit polygamy and whether the Committee considering those amendments included female representatives of the Muslim community. Had any time frame been set for the adoption of those amendments? Had thought been given to the drafting of a unified family code? Was any timeframe in place for removing provisions from other laws which discriminated against women?

25. He asked whether any steps were being considered to explicitly prohibit sexual orientation as grounds for discrimination and to address discrimination in law and in practice against members of the lesbian, gay, bisexual and transgender (LBGT) community.

26. He wondered whether the impunity which still prevailed with regard to domestic violence was due to a lack of women's awareness of their rights, a lack of training for law-

enforcement officers or the attitude of political leaders. He was therefore eager to hear what steps were being considered to combat all forms of violence against women and to adopt comprehensive legislation to prevent such violence, including rape. Was the State party contemplating the criminalization of marital rape?

27. It was unclear what period was covered by the reply to question 7. He was unsure whether the small number of prosecutions was compatible with the State party's duty under the Covenant to promptly investigate, prosecute and punish sexual offences committed by security personnel during and after the conflict. It would be helpful to receive detailed information on measures taken by the State party to respond to the findings of an International Crisis Group's report regarding an escalation of violence against war widows and single women and the abuse and harassment of former female combatants.

28. **Mr. Neuman** failed to understand what justification there was for the derogation from article 9(3) of the Covenant, since the emergency had ended and he was unsure whether the provisions on detention under the Prevention of Terrorism Act satisfied the standard set in article 4. Was the fact that the courts had no authority to review the need for detention under that Act consistent with the Covenant? What justification was there for the reversal of the burden of proof under that Act, which made it incumbent on the accused to prove that a confession had not been voluntary? The Committee wished to know how many habeas corpus cases had been filed in order to obtain release from security-related detention and in how many of those cases the courts had actually granted release. Had there been any cases which had led to the release of the detainee? When would the special detention regime be repealed?

29. **Ms. Seibert-Fohr**, referring to protection of the right to life, enquired as to the steps taken to prevent enforced and involuntary disappearances and extrajudicial killings (so-called "white van abductions"), which were still a serious problem and in which the military, the police and paramilitary groups under the control of the armed forces were allegedly implicated. What procedures and institutional mechanisms were in place to investigate the whereabouts of missing persons? She asked about the existence of official statistics recording disappearances. Was the Presidential Commission of Inquiry on Missing Persons in the Northern and Eastern Provinces competent to investigate disappearances in other parts of the country? Had the Commission, or any other investigative body, referred substantiated cases of abduction to the appropriate criminal procedures? Had the perpetrators been punished and had victims' families received compensation? She advocated expressly embodying the right to life in the Constitution and criminalizing enforced disappearance in the Penal Code. She would appreciate a description of the procedures and legal basis for investigating death during police custody. Which independent institution was in charge of such investigations? How many such deaths had occurred and what had been the outcome of the inquiry? What steps had been taken to conduct an independent investigation of the use of force by the army during riots in Welikada prison in 2012 and what obstacles existed to the proper investigation of deaths during the riot in Vavuniya prison in order to establish criminal responsibility and accountability for them ?

30. An update on efforts to amend the Penal Code to decriminalize abortion for therapeutic reasons or after rape or incest would be helpful. What was the result of the consultative process on that matter? When would the Bill mentioned in paragraph 64 of the State party's replies be introduced in Parliament? Information would be welcome on any measures to identify the reasons for and to prevent maternal mortality and to improve access to contraception and information about reproductive health and family planning in all regions of the State party.

31. **Mr. Shany** asked whether the findings of the inquiry into the killing of 17 local staff members of a French NGO in 2006 had been published and whether any measures had been

adopted in connection with those investigations. Had any steps been taken to address the concerns raised by the International Independent Group of Eminent Persons regarding the independence and impartiality of that inquiry? Since it was unclear why the factual findings of the Secretary-General's Panel of Experts on Accountability in Sri Lanka (Darusman Report) had been disputed by the Lessons Learnt and Reconciliation Commission (LLRC), it would be interesting to know whether those findings had been thoroughly examined and on what evidentiary basis they had been refuted. He also asked the delegation if the Army Court of Inquiry had investigated reports in Channel 4 broadcasts of extrajudicial executions, the shelling of civilians and rape and if anyone had been prosecuted for those alleged crimes. Why had the Court of Inquiry report not been placed in the public domain? Had there been any follow-up to the findings which it contained?

32. He invited the delegation to say whether the State party had adopted a restorative justice approach and to explain its current position on the need to balance accountability and reconciliation. He also asked it to respond to allegations regarding the lack of independence, adequate resources or witness protection programmes of the main post-LLRC investigative mechanisms.

33. He invited the delegation to respond to concerns about the independence and impartiality of the Court of Inquiry to investigate allegations of civilian casualties during the Sri Lankan Civil War, especially given that its members had been appointed by General Jagath Jayasuriya, who had been responsible for planning operations in the Vanni region.

34. He requested further information on the Presidential Commission to Investigate Complaints regarding Missing Persons, and asked whether the established time frame for the completion of its work was realistic, bearing in mind that it had already received almost 20,000 complaints. He asked whether it was true that the military was responsible for registering complaints, and whether temporary measures had been put in place ahead of the adoption of the Assistance and Protection to Victims of Crime and Witnesses Protection Bill.

35. He said that he wished to know whether the Government would reconsider its position with respect to the fact-finding body set up by the Human Rights Council. He also asked what steps had been taken to deliver justice to victims of the Civil War. In particular, the delegation should indicate how many, and to what extent, individuals had benefited from the reparations programme established under the National Action Plan on Promotion and Protection of Human Rights.

36. In reference to the report published by the Lessons Learnt and Reconciliation Commission (LLRC), he noted that the Government had earmarked 144 of the 285 operative paragraphs for implementation. He wished to know who had made the selection, on what basis, whether substantive recommendations had been omitted, and whether it was feasible to implement 144 recommendations in the time frame laid out for the National Action Plan.

37. He would welcome more detailed progress reports on the implementation of the National Action Plan, particularly in relation to reparations and investigations into the conscription of children. Five years on from the end of the Civil War, it was still not clear whether perpetrators had been brought to justice and redress provided, a situation at odds with the principles of accountability and transparency that formed the bedrock of any post-conflict human rights-based strategy.

38. **Mr. Ben Achour**, noting that article 35 of the Constitution granted almost complete immunity from prosecution to the head of state, asked whether it was in line with the principles of international law, which held that States had a duty to try persons suspected of serious human rights violations.

The meeting was suspended at 4.55 p.m. and resumed at 5.15 p.m.

39. **Ms. Tillekeratne** (Sri Lanka), responding to questions about the status of the Covenant and the First Optional Protocol within the Sri Lankan legal system, the eighteenth amendment to the Constitution and the role of the Human Rights Commission, drew the Committee's attention to paragraphs 3 to 24 of the replies to the list of issues (CCPR/C/LKA/Q/5/Add.1).

40. Article 12 of the Constitution provided for the equality of all persons before the law. It stipulated that no citizen could be discriminated against on the grounds, inter alia, of sex, rendering discriminatory laws and regulations unconstitutional. In that connection, it should be noted that sections 365 and 365 (a) of the Penal Code were not intended to target any particular group, but rather to preserve morality and public order.

41. **Mr. Pulle** (Sri Lanka), responding to questions about the Marriage Registration Ordinance, made reference to paragraph 42 of the replies to the list of issues. With regard to counter-terrorism, he drew the Committee's attention to paragraphs 47 to 57 of the same document. The 133 habeas corpus cases pending throughout the country would be settled in accordance with the legal procedures in place.

42. **Ms. Premawardhane** (Sri Lanka) said that, although the Government had militarily defeated the Liberation Tigers of Tamil Eelam (LTTE), overseas networks funded by expatriate members of the Tamil community still existed. The recently published EU Terrorism Situation and Trend Report 2014 had observed that LTTE networks remained in numerous countries, including Switzerland, and continued to attempt to rebuild their structures and operating capabilities, especially via fundraising and money laundering. Security forces in Sri Lanka had uncovered buried arms caches, but many more had yet to be found and posed a risk to national security.

43. Several incidents in recent years had provided evidence that former LTTE operatives in Europe, Malaysia, India and Sri Lanka were attempting to instigate a resurgence of terrorism. In 2012, LTTE cadres, acting on orders from accomplices in France, had assassinated a member of the Eelam People's Democratic Party. In the same year, Sri Lankan and Indian authorities had conducted a joint operation resulting in the arrest of LTTE operatives suspected of training young recruits to produce improvised explosive devices in Chennai, India.

44. In March 2014, after years of monitoring, the Government had placed 16 entities and 424 individuals on a sanctions list in accordance with United Nations Security Council Resolution 1373. The funds and assets of the entities and persons in question would remain frozen until they had been removed from the list. Investigations had confirmed that three former LTTE operatives had played a particularly significant role in recovering weapons and money, recruiting unemployed youths and rehabilitated LTTE cadres, and collecting information on potential assassination targets across Sri Lanka. Their efforts had been funded by associates in Europe, who had transferred money illegally through the *hawala* system. Although the three men had been killed on 11 April 2014, their case highlighted the threat that Sri Lanka still faced from LTTE remnants.

45. In May 2014, as part of ongoing attempts to address the issue, Malaysian authorities had extradited three former LTTE operatives wanted in connection with terrorism-related offences committed in Sri Lanka. The Government would continue to cooperate with other nations to prevent LTTE remnants from rebuilding the organization's military capability.

46. **Mr. Aryasinha** (Sri Lanka) said that the Prevention of Terrorism Act had not been repealed as LTTE remnants still posed a threat to national security. The Government was aware of the need to ensure that any action taken was necessary and proportionate, and had

taken note of the situation in other countries affected by terrorist acts, such as Iraq and the Syrian Arab Republic.

47. The Government's approach to reintegrating former combatants had involved taking calculated risks, such as the decision to allow longstanding emergency regulations to lapse in August 2011. It had also been a risk to rehabilitate LTTE cadres in society rather than in government institutions, but the former had been considered the setting most likely to produce positive results. In sum, when determining its response to the threat of terrorism, the Government had to err on the side of caution and be mindful of its responsibilities, which included the duty to protect citizens' right to life.

The meeting rose at 6 p.m.